

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. CR-08-302-D
)
DAMIEN LAMONT KEITH and)
MILTON DARIS KNIGHT,)
)
Defendants.)

O R D E R

The Court has received responses from the government and Defendants stating their positions concerning whether a hearing is needed pursuant Fed. R. Crim. P. 44(c)(2) to inquire into the propriety of joint representation. *See Order 12/22/08 [Doc. No. 25]*. The Court is informed that a magistrate judge has already advised each defendant of the right to separate representation and that each has indicated his understanding and waiver of this right. The government expresses concern, however, that a potential exists for a conflict to develop should one defendant be offered, or wish to negotiate, a plea bargain. The government thus argues that further inquiry by the Court is appropriate, while Defendants insist that none is needed.

In view of the fact that Defendants have already been informed of their right to separate representation, the Court finds that no Rule 44(c) hearing is presently needed. There is currently insufficient information concerning a potential conflict of interest – beyond what was known to the magistrate judge – that would permit a more effective waiver at this time. *See United States v. Gallegos*, 108 F.3d 1272, 1281 (10th Cir. 1997) (a waiver of conflict-free representation “must be a knowing, intelligent act, done with sufficient awareness of the relevant circumstances and likely consequences”). The Court is mindful, however, of its continuing obligation under Rule 44(c) to

guard against conflicts of interest that may develop as circumstances change during the course of a representation, possibly rendering a prior waiver invalid. *See United States v. Migliaccio*, 34 F.3d 1517, 1528 (10th Cir. 1994). Therefore, the Court directs counsel to provide prompt notice of any material change of circumstances that may warrant a Rule 44(c) hearing in the future.

IT IS SO ORDERED this 26th day of January, 2009.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE